IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 4TH OCTOBER 2007 / 12TH ASWINA 1929

Bail Appl..No. 6030 of 2007(B)

LPC.144/2002 of J.M.F.C.,PARAPPANANGADI
CRIME NO.168/93 OF TANUR POLICE STATION

.....

: PETITIONER/2ND ACCUSED

BAVA, S/O. ABDULLAKUTTY,
POKKARAJINTE AKATH,
RAYIRIMANGALAM AMSOM DESOM,
TANUR, MALAPPURAM DISTRICT.

BY ADV. SRI.K.P.SUDHEER

RESPONDENTS: COMPLAINANT

STATE OF KERALA REP.
BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA
ERNAKULAM REPRESENTING SUB INSPECTOR OF POLICE,
TANUR POLICE STATION,
MALAPPURAM DISTRICT.

BY PUBLIC PROSECUTOR SRI.S.U. NAZAR.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 04/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 6030 OF 2007

Dated this the 4th day of October, 2007

ORDER

The petitioner faces indictment in a prosecution for offences punishable, inter alia, under Secs.427 and 506 read with Sec.149 of the IPC. The alleged incident occurred in 1993. Investigation was completed. Final report was filed. The case was registered in 1994. The petitioner was not available. The case against him was split up and renumbered. It was transferred to the list of Long Pending Cases in 2002. Coercive processes have been issued by the learned Magistrate to secure the presence of the petitioner. The petitioner finds a warrant of arrest issued by the learned Magistrate chasing him.

2. According to the petitioner, he is absolutely innocent. His absence earlier was not wilful or deliberate. The

petitioner is willing to appear before the learned Magistrate and co-operate with the court for the expeditious disposal of the case. The petitioner apprehends that his application for regular bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. It is, in these circumstances, prayed that directions under Sec.438 and/or Sec.482 of the Cr.P.C. may be issued in favour of the petitioner.

3. The learned Public Prosecutor opposes the application. There are no circumstances justifying the invocation of the discretion under Sec.438 of the Cr.P.C., submits the learned Public Prosecutor.

4. I have considered all the relevant inputs. After the decision in **Bharat Chaudhary and another v. State of Bihar (**AIR 2003 SC 4662), it is by now trite that powers under Sec.438 of the Cr.P.C. can be invoked in favour of a person who apprehends arrest in execution of a non-bailable warrant issued by a court in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist. I am not persuaded, in the facts and circumstances of this case, that any such reasons exist.

5. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the

circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the petitioner's application for regular bail on merits in accordance with law and expeditiously. No special or specific directions appear to be necessary. Every court must do the same. Sufficient general directions on this aspect have already been issued in the decision reported in **Alice George v. Deputy Superintendent of Police** (2003 (1) KLT 339).

6. In the result, this bail application is dismissed; but with the observation that if the petitioner surrenders before the learned Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously – on the date of surrender itself.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge